



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Service, aging and Disability Services Administration

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose:

The department is amending and creating new sections to these rules to make editorial and clarifying changes, and to make the rules consistent with current laws and standards. Please see Attachment A to CR 103 for the specific sections.

Citation of existing rules affected by this order:

Repealed: None

Amended: See attachment

Suspended: None

Statutory authority for adoption: Chapter 18.20 RCW

Other authority : None

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-20-061 on October 2, 2009 (date).

Describe any changes other than editing from proposed to adopted version:

See attachment A.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

January 14, 2010

NAME (TYPE OR PRINT)

Susan N. Dreyfus

SIGNATURE

TITLE

Secretary, Department of Social and Health Services

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 15, 2010

TIME: 3:06 PM

WSR 10-03-066

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>27</u>	Amended	<u>18</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>27</u>	Amended	<u>18</u>	Repealed	_____

Rulemaking CR 103
Chapter 388-78A WAC, Boarding Homes

Attachment A

Describe any changes other than editing from proposed to adopted version:

The changes, other than editing changes, follow in track changes below.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2470 Criminal history disclosure and background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
- (b) Managers;
- (c) Volunteers who are not residents;
- (d) Contractors; and
- (e) Students.

(2) The boarding home must:

~~((a))~~ ensure that any individual ((associated with the licensee or boarding home who may have unsupervised access to residents)) described in subsection (1) has had a background check ((of conviction records, pending charges and disciplinary board decisions)) completed within the past two years, and that the background check is repeated every two years ((thereafter, and that individual has not been:

~~((i)))~~ ;

(3) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has been:

(a) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830 ((or 43.43.842)), unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since the last conviction;

~~((((i)))~~ (b) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830 ((or 43.43.842)), unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((((iii)))~~ Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

~~((iv))~~ The subject in a protective proceeding under chapter 74.34 RCW;

~~((v))~~ Convicted of criminal mistreatment; or

~~((vi))~~ Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

~~((b))~~ Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

~~((3))~~ (c) Convicted of:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA); or

(iv) Violation of the uniform precursor drug act (VUPDA);

(d) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(e) Convicted of criminal mistreatment; or

(f) Convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime described in this subsection.

(4) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has:

(a) Been found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

(b) A finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for finding made before December, 1998.

(c) A finding of abuse, neglect, exploitation or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(5) Prior to first starting his or her duties, the boarding home must(:

(a)) require each ((prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose)) individual described in subsection (1) to make disclosures, consistent with RCW 43.43.834(2)((;)). The disclosures must be in writing and signed by the individual under penalty of perjury. Each individual must disclose whether he or she:

((i)) (a) Has been convicted of ((a)) any crime, including ((any of the following as defined in RCW 43.43.830:

(A) All crimes against children or their persons;

(B) All crimes relating to financial exploitation; and

(C) All crimes relating to drugs;

(ii)) the crimes listed in subsection (3);

(b) Has had findings made against him or her in any civil adjudicative proceeding ((as defined in RCW 43.43.830)); or

((iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4)) (c) Has one or more convictions and one or more civil adjudicative proceeding findings.

(6) Prior to first starting his or her duties, for each individual described in subsection (1), the boarding home must take one or more of the ((following three)) actions ((for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents)) described in (a), (b) and (c):

(a) Initiate a background check ((on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting)) by submitting all background check authorization forms to the department's((:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.)) background check central unit (BCCU), except the forms should be submitted to the aging and disability services administration with an initial license application;

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer (~~((was))~~) is a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The (~~((nursing home, boarding home or adult family home))~~) employer providing (~~((completed criminal background inquiry))~~) the information (~~((for the individual))~~) is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed (~~((from))~~) between the date the individual was last employed (~~((by the nursing home, boarding home or adult family home))~~) and the date of the individual's current application;

(iv) The background (~~((inquiry for the individual))~~) information is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in (~~((RCW 43.43.842-))~~) subsections (3) and (4); or

(c) (~~((When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must))~~) Establish, maintain and follow a written agreement with ((the agency or pool)) home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of ((subsection (2) of this section are met for the agency or pool staff who may work in the boarding home)) subsections (3) and (4).

~~((5))~~ (7) The boarding home must verbally inform the named individual of his or her background check results from the department and offer to provide him or her a copy of the results within ten days of receipt.

(8) The boarding home must ensure that all disclosure statements, and background check results ((obtained by the boarding home,)) are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to (~~((any individual))~~) anyone except((:

(i)) to the individual ((named on the background check result;

(ii)), authorized state and federal employees((;

(iii)), the Washington state patrol auditor((; and

(iv) As otherwise)), or persons authorized ((in)) by chapter 43.43 RCW.

(d) Retained and available for department review((:

(i)) during the individual's ((employment or association with a facility; and

(ii) At least two years following termination of)) employment or association with a facility and for at least two years after termination of the employment or association.

~~((6))~~ (9) The boarding home may conditionally hire an individual described in subsection (1), ((directly or by contract, an individual having unsupervised access to residents)) pending a background inquiry, provided that the boarding home:

(a) Obtains a criminal history background check authorization form from the individual ((prior to the individual beginning work)) before he or she is allowed unsupervised access to resident;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual ((started)) starts working; and

(c) Has received three positive references for the individual before he or she is allowed unsupervised access to residents.

~~((7))~~ (10) The department may require the boarding home or any ((other)) individual ((associated with the boarding home who has unsupervised access to residents)) described in subsection (1) to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified ((under RCW 43.43.830)) in subsections (3) and (4) of this section have occurred since completion of the previous disclosure statement or background inquiry.

(11) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

(12) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

(13) As used in this section, "civil adjudicative proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative finding that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

[Statutory Authority: Chapters 18.20 and 74.34 RCW. 09-01-052, § 388-78A-2470, filed 12/10/08, effective 1/10/09. Statutory Authority: RCW 18.20.090 and chapters 18.20 and 74.34 RCW. 08-05-099, § 388-78A-2470, filed 2/15/08, effective 3/17/08. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2470, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2470, filed 7/30/04, effective 9/1/04.]

NEW SECTION

WAC 388-78A-2483 Tuberculosis--One step testing. The boarding home is only required to have a staff person take a one ~~step skin or blood~~ test if the staff person has any of the following:

- (1) A documented history of a negative result from a previous two step skin testing done no more than one to three weeks apart; or
- (2) A documented negative result from one ~~step skin or blood testing~~ in the previous twelve months.

NEW SECTION

WAC 388-78A-2484 Tuberculosis--Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only ~~a one step skin~~ test, the boarding home choosing to do skin testing, must ensure that each staff person has the following two-step skin testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.; ~~except~~
- ~~(3) A two step test is not required for the IGRA blood test, which is only a one step test.~~

NEW SECTION

WAC 388-78A-2485 Tuberculosis--Positive test result. When there is a positive result to tuberculosis skin or blood testing the boarding home must:

- (1) Ensure that the staff person has a chest X-ray within seven days;
- (2) Ensure Evaluate each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and
- (3) Follow the recommendation of the resident or staff person's health care provider.

NEW SECTION

~~**WAC 388-78A-2731 Liability insurance required--Application.** (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.~~

~~(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-78A-2733 and 388-78A-2734.~~

NEW SECTION

WAC 388-78A-2732 Liability insurance required--Ongoing. The boarding home must:

(1) ~~Obtain liability insurance upon licensure and m~~ Maintain liability the insurance as required in WAC 388-78A-2733 and 388-78A-2734; and

(2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-78A-4000 Notice--Service complete. Service of the ~~The~~ department's notices is complete when:

(1) Personal service is made;

(2) The notice is ~~properly stamped~~ addressed to the individual or facility at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence ~~produces proof~~ of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

The changes were made because:

To make the requirements clearer

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
2470 The section needs to be reorganized for clarity and ease of reading.	Changes were made to clarify this section.
2483-2484 Use of the word "step" to describe one step test is confusing.	A change was made in response to this comment to take out the word "step" when referring to one skin test and clarifying that one test could be skin or blood test.
2485 The resident also needs to be evaluated if he or she has a positive test result.	A change was make to clarify that both residents and staff need to be evaluated when there is a positive test result.
2731 and 2732 It may be a long time before an applicant receives a license and the applicant man not have enough information to get the liability insurance ahead of time.	A change was made to delete the section requiring the insurance with application and clarifying that the boarding home must obtain the insurance upon licensure.
4000 The process of when the department's notice is complete needs clarification.	A change was made to clarify this section.

cc: DSHS Rules Coordinator

Attachment A to CR 103
Chapter 388-78A WAC

The department is proposing amendments to the following existing WAC sections:

- 388-78A-2060 Preadmission assessment.
- 388-78A-2300 Food and nutrition services.
- 388-78A-2440 Resident register.
- 388-78A-2470 Criminal history disclosure and background checks.
- 388-78A-2480 Tuberculosis – Testing – Required.
- 388-78A-2520 Administrator qualifications – General.
- 388-78A-2540 Administrator requirements.
- 388-78A-2590 Management agreements – General.
- 388-78A-2910 Applicable building codes.
- 388-78A-3030 Toilet rooms and bathrooms.
- 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.
- 388-78A-3410 Resident protection program – Notice to the individual of preliminary finding.
- 388-78A-3420 Resident protection program – Notice to others of preliminary findings.
- 388-78A-3430 Resident protection program – Disputing a preliminary finding.
- 388-78A-3450 Resident protection program – Finalizing a preliminary finding.
- 388-78A-3460 Resident protection program – Appeal of initial order.
- 388-78A-3470 Resident protection program – Reporting final findings.
- 388-78A-3480 Resident protection program – Disclosure of investigative and finding information.

The department is proposing the following new sections:

- 388-78A-2481 Tuberculosis – Testing method – Required.
- 388-78A-2482 Tuberculosis – No testing.
- 388-78A-2483 Tuberculosis – One test.
- 388-78A-2484 Tuberculosis – Two step skin testing.
- 388-78A-2485 Tuberculosis – Positive test result.
- 388-78A-2486 Tuberculosis – Negative test result.
- 388-78A-2487 Tuberculosis – Declining a skin test.
- 388-78A-2488 Tuberculosis – reporting – Required.
- 388-78A-2489 Tuberculosis – Test records.
- 388-78A-2521 Certification of training.
- 388-78A-2522 Administrator qualifications – Prior to 2004.
- 388-78A-2523 Administrator qualification – NH Administrator license.
- 388-78A-2524 Administrator qualifications – Certification of training, and three years experience.

- 388-78A-2525 Administrator qualifications – Associate degree, certification of training, and two years experience.
- 388-78A-2526 Administrator qualifications – Bachelor's degree, certification of training, and one year experience.
- 388-78A-2527 Administrator qualifications – Five years experience.
- 388-78A-2592 Management Agreements – Licensee.
- 388-78A-2593 Management Agreements – Terms of Agreement.
- 388-78A-2594 Management Agreements – Department Review.
- 388-78A-2595 Management Agreements – Resident Funds.
- 388-78A-2665 Resident Rights – Notice – Policy on accepting Medicaid as a payment source.
- 388-78A-2732 Liability insurance required – Ongoing.
- 388-78A-2733 Liability insurance required – Commercial General Liability Insurance or Business Liability Insurance coverage.
- 388-78A-2734 Liability insurance required – Professional Liability Insurance coverage.
- 388-78A-3390 Resident protection program – Individual defined.
- 388-78A-4000 Notice – Service complete.
- 388-78A-4010 Notice – Proof of service.